

NURSING CARE FACILITY LICENSURE

MODIFICATIONS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

Senate Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill amends the Long-term Care Facility - Licensing part of the Health Code.

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ places restrictions on the Department of Health's authority to issue a license for certain nursing care facilities.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

This bill provides revisor instructions.

Utah Code Sections Affected:

AMENDS:

26-18-503, as enacted by Chapter 215, Laws of Utah 2004

ENACTS:

26-21-23, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:



28 Section 1. Section **26-18-503** is amended to read:

29 **26-18-503. Authorization to renew, transfer, or increase Medicaid certified**
30 **programs.**

31 (1) The division may renew Medicaid certification of a certified program if the
32 program, without lapse in service to Medicaid recipients, has its nursing care facility program
33 certified by the division at the same physical facility.

34 (2) (a) The division may issue a Medicaid certification for a new nursing care facility
35 program if a current owner of the Medicaid certified program transfers its ownership of the
36 Medicaid certification to the new nursing care facility program and the new nursing care
37 facility program meets all of the following conditions:

38 (i) the new nursing care facility program operates at the same physical facility as the
39 previous Medicaid certified program;

40 (ii) the new nursing care facility program gives a written assurance to the director in
41 accordance with Subsection (4); and

42 (iii) the new nursing care facility program receives the Medicaid certification within
43 one year of the date the previously certified program ceased to provide medical assistance to a
44 Medicaid recipient.

45 (b) A nursing care facility program that receives Medicaid certification under the
46 provisions of Subsection (2)(a) does not assume the Medicaid liabilities of the previous nursing
47 care facility program if the new nursing care facility program:

48 (i) is not owned in whole or in part by the previous nursing care facility program; or

49 (ii) is not a successor in interest of the previous nursing care facility program.

50 (3) The division may issue a Medicaid certification to a nursing care facility program
51 that was previously a certified program but now resides in a new or renovated physical facility
52 if the nursing care facility program meets all of the following:

53 (a) the nursing care facility program met all applicable requirements for Medicaid
54 certification at the time of closure;

55 (b) the new or renovated physical facility is in the same county or within a five-mile
56 radius of the original physical facility;

57 (c) the time between which the certified program ceased to operate in the original
58 facility and will begin to operate in the new physical facility is not more than three years;

59 (d) if Subsection (3)(c) applies, the certified program notifies the department within 90
60 days after ceasing operations in its original facility, of its intent to retain its Medicaid
61 certification;

62 (e) the provider gives written assurance to the director in accordance with Subsection
63 (4) that no third party has a legitimate claim to operate a certified program at the previous
64 physical facility; and

65 (f) the bed capacity in the physical facility [~~that will be used for additional Medicaid~~
66 ~~certification~~] has not been expanded by more than 30% over the [~~previously certified~~] previous
67 program's bed capacity, unless the director has approved additional beds in accordance with
68 Subsection (5).

69 (4) (a) The entity requesting Medicaid certification under Subsections (2) and (3) must
70 give written assurances satisfactory to the director or his designee that:

71 (i) no third party has a legitimate claim to operate the certified program;

72 (ii) the requesting entity agrees to defend and indemnify the department against any
73 claims by a third party who may assert a right to operate the certified program; and

74 (iii) if a third party is found, by final agency action of the department after exhaustion
75 of all administrative and judicial appeal rights, to be entitled to operate a certified program at
76 the physical facility the certified program shall voluntarily comply with Subsection (4)(b).

77 (b) If a finding is made under the provisions of Subsection (4)(a)(iii):

78 (i) the certified program shall immediately surrender its Medicaid certification and
79 comply with division rules regarding billing for Medicaid and the provision of services to
80 Medicaid patients; and

81 (ii) the department shall transfer the surrendered Medicaid certification to the third
82 party who prevailed under Subsection (4)(a)(iii).

83 (5) (a) As provided in Subsection 26-21-502(2)(b), the director shall issue additional
84 Medicaid certification when requested by a nursing care facility or other interested party if
85 there is insufficient bed capacity with current certified programs in a service area. A
86 determination of insufficient bed capacity shall be based on the nursing care facility or other
87 interested party providing reasonable evidence of an inadequate number of beds in the county
88 or group of counties impacted by the requested Medicaid certification based on:

89 (i) current demographics which demonstrate nursing care facility occupancy levels of at

90 least 90% for all existing and proposed facilities within a prospective three-year period;

91 (ii) current nursing care facility occupancy levels of 90%; or

92 (iii) no other nursing care facility within a 35-mile radius of the nursing care facility
93 requesting the additional certification.

94 (b) In addition to the requirements of Subsection (5)(a), a nursing care facility program
95 must demonstrate by an independent analysis that the nursing care facility can financially
96 support itself at an after tax break-even net income level based on projected occupancy levels.

97 (c) When making a determination to certify additional beds or an additional nursing
98 care facility program under Subsection (5)(a):

99 (i) the director shall consider whether the nursing care facility will offer specialized or
100 unique services that are underserved in a service area;

101 (ii) the director shall consider whether any Medicaid certified beds are subject to a
102 claim by a previous certified program that may reopen under the provisions of Subsections (2)
103 and (3); and

104 (iii) the director may consider how to add additional capacity to the long-term care
105 delivery system to best meet the needs of Medicaid recipients.

106 Section 2. Section **26-21-23** is enacted to read:

107 **26-21-23. Licensing of non-Medicaid nursing care facility beds.**

108 (1) Notwithstanding the provisions of Section 26-21-2, for purposes of this section
109 "nursing care facility" and "small health care facility":

110 (a) mean the following facilities licensed by the department under this chapter:

111 (i) skilled nursing homes;

112 (ii) intermediate care facilities; or

113 (iii) small health care facilities with four to sixteen beds functioning as a skilled
114 nursing home; and

115 (b) does not mean:

116 (i) an intermediate care facility for the mentally retarded;

117 (ii) a critical access hospital that meets the criteria of 42 U.S.C. 1395i-4(c) (2) (1998);

118 (iii) a small health care facility which is hospital based; or

119 (iv) a small health care facility other than a skilled nursing home with 16 beds or less.

120 (2) Except as provided in Subsection (5), a new nursing care facility shall be approved

121 for a health facility license only if the applicant proves to the division that:

122 (a) the facility will be Medicaid certified under the provisions of Section 26-18-503;

123 (b) the facility will have at least 120 beds; or

124 (c) (i) the facility's projected Medicare inpatient revenues do not exceed 49% of the
125 facility's revenues;

126 (ii) the facility has identified projected non-Medicare inpatient revenue sources; and

127 (iii) the non-Medicare inpatient revenue sources identified in this Subsection (2)(c)(iii)

128 will constitute at least 51% of the revenues as demonstrated through an independently certified

129 feasibility study submitted and paid for by the facility and provided to the division.

130 (3) The division may not approve the addition of licensed beds in an existing nursing
131 care facility unless the nursing care facility satisfies the criteria established in Subsection (2).

132 (4) The department may make rules to administer and enforce this part in accordance
133 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

134 (5) The provisions of Subsection (2) do not apply to a nursing care facility that has:

135 (a) filed an application with the department and paid all applicable fees to the
136 department on or before the effective date of this bill; and

137 (b) submitted to the department the working drawings, as defined by the department by
138 administrative rule, on or before March 1, 2008.

139 **Section 3. Effective date.**

140 If approved by two-thirds of all the members elected to each house, this bill takes effect
141 upon approval by the governor, or the day following the constitutional time limit of Utah
142 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
143 the date of veto override.

144 **Section 4. Revisor instructions.**

145 It is the intent of the Legislature that, in preparing the Utah Code database for
146 publication, the Office of Legislative Research and General Counsel shall delete "the effective
147 date of this bill" where it appears in Subsection 26-21-23(5)(a) and replace it with the actual
148 date on which the bill takes effect.

Legislative Review Note
as of 1-26-07 2:26 PM

Office of Legislative Research and General Counsel

H.B. 369 - Nursing Care Facility Licensure Modifications

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill could have an impact on the revenue of some health care facilities depending on patient types currently allowed in a given facility. Additional costs may be incurred by some facilities for required feasibility studies. It is estimated that there will not be measurable costs and/or benefits for individuals or local governments.
